

EQUIPMENT LOAN TERMS OF USE

This agreement ("**Agreement**") is made as of the date on the confirmation correspondence from CMC following receipt of a request form ("**Effective Date**"), by and between Canadian Microelectronics Corporation / Société Canadienne de Micro-Électronique operating as CMC Microsystems with its principal place of business located at 1055 Princess Street, Suite 301, Kingston, Ontario K7L 1H3 ("**CMC**"), and the institution or company as named in the confirmation correspondence from CMC ("**Institution or Company**", as applicable). If the equipment is to be used by an Institution, this Agreement is between the CMC Member named on the Technology Usage Agreement and/or CMC's Subscription Terms and Conditions.

WHEREAS CMC maintains a pool of test equipment for loan;

AND WHEREAS Institution or Company wishes to enter into an agreement with CMC to obtain certain test equipment for a limited time;

NOW THEREFORE IN CONSIDERATION of the terms mutually agreed to herein, CMC will loan test equipment to Institution or Company, for the length of time and for the sum of money as specified in the confirmation correspondence received from CMC following receipt of a request form, subject to the following terms and conditions:

1. **Term:** This Agreement will take effect on the Effective Date and will terminate upon Institution or Company's return of the equipment to CMC and following receipt of payment (if applicable and as arranged between CMC and Institution or Company).
2. **Equipment Title and Ownership:** Institution or Company and CMC agree that all equipment remains the property of CMC. Institution or Company has no claim over or ownership of the equipment loaned to Institution or Company by CMC.
3. **Delivery and Return of Equipment:** CMC shall make arrangements and pay for delivery and/or pick-up of the equipment to and from Institution or Company. CMC reserves the right to request the return of the equipment in the event Institution or Company breaches the terms of this Agreement. In the event arrangements have been made by CMC to trans-ship the equipment to another location at the end of the Term, Institution or Company will follow all instructions provided by CMC to prepare the Equipment.
4. **Institution or Company's Obligations and Acknowledgements:**
 - (a) Institution or Company shall comply with all applicable export laws, sanctions, and/or embargoes. Institution or Company shall not directly or indirectly transfer, export, re-export or import (or cause to be transferred, exported, re-exported or imported) any equipment or technical data to which such is restricted or prohibited by export laws, sanctions and/or embargoes.
 - (b) Institution or Company acknowledges the equipment is neither intended nor authorized for use in life support systems, human implantation, nuclear facilities, chemical, biological or nuclear weapons, military defense or any other application where equipment use or failure could lead to injury, loss of life or property damage.
 - (c) Institution or Company may be required to download and use certain open source software programs to use the equipment. Any such use is subject to the applicable open source licenses. Institution or Company is responsible for complying with the terms and conditions of all applicable open source licenses in its use of the equipment.
 - (d) Institution or Company acknowledges the equipment is provided AS IS. Institution or Company will inspect the equipment upon arrival and again prior to pick up to ensure it is in a fit and operable condition. By taking possession of the loaned equipment Institution or Company accepts and agrees that the equipment is in a fit and operable condition.
 - (e) Institution or Company shall comply with the original manufacturer's equipment specifications if provided.
 - (f) Institution or Company agrees to maintain accurate records related to the care and use of the equipment and agrees to notify CMC should the equipment become damaged, lost or stolen.
 - (g) Institution or Company agrees to reimburse CMC for equipment repair or replacement if the equipment becomes lost or stolen or damaged beyond normal wear and tear while in Institution or Company's possession.

(h) Institution or Company shall return the equipment to CMC in the same condition as it was when Institution or Company first received the equipment from CMC. Institution or Company shall ensure the returned equipment does not contain any residual confidential, sensitive, or proprietary information and is free of any viruses, malware or other harmful code.

5. Restrictions:

(a) Institution or Company shall not permit access to the equipment outside of Canada.

(b) Institution or Company shall not duplicate, clone or copy the equipment nor modify, correct, adapt, translate, enhance, or otherwise prepare derivative works of or improvements to the equipment at any time.

(c) Institution or Company shall not reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the internal components of the equipment in any way.

6. Charges and Payment: If applicable, CMC shall invoice Institution or Company for the equipment. Payment is due within 30 days of the invoice date, subject to any late payment interest charges set out on such invoice.

7. Indemnity:

(a) Institution or Company shall indemnify and save harmless CMC, its employees, affiliates and agents or related third parties in respect of any claim, loss, damage or expense arising with respect to the equipment loaned to Institution or Company under this Agreement relating,

(i) to any injury or death of a person, or loss of or damage to property, caused or alleged to be caused by the equipment while it is on loan to Institution or Company, and

(ii) to any lien, attachment, charge, encumbrance or similar claim upon any property of CMC which arises by any act or omission of Institution or Company, its agents, employees, students, invitees or licensees, and

(iii) to any use of the equipment contrary to the terms of this Agreement, and

(iv) to any use or infringement of patented invention or copyright by Institution or Company.

(b) CMC agrees that the indemnification herein shall not be required for any claim, loss, damage or expense arising through the negligent act or omission of CMC provided that in no event will CMC or any of its employees, affiliates and agents or related third parties be liable under or in connection with this Agreement or its subject matter under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability and otherwise, including, without limitation, for any: (i) loss of production, use, business, contracts, revenue, profit; (ii) business or operations interruption or impairment; (iii) any use of or inability to use the equipment; (iv) loss, damage, corruption or recovery of data, or breach of data or system security; or (v) consequential, incidental, indirect, special, aggravated, punitive or exemplary damages, in each case regardless of whether such persons were advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable and notwithstanding the failure of any agreed or other remedy of its essential purpose. In no event shall CMC's total liability arising out of or related to this Agreement exceed amounts paid for use of the equipment by Institution or Company to CMC hereunder.

8. No Warranty: THE EQUIPMENT IS PROVIDED AS IS. CMC HEREBY DISCLAIMS ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND CMC SPECIFICALLY DISCLAIMS ALL CONDITIONS AND WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. FOR CLARITY, THERE IS NO WARRANTY OR GUARANTEE THAT THE OPERATION OF THE EQUIPMENT (OR RELATED SOFTWARE) WILL BE UNINTERRUPTED, ERROR-FREE, OR VIRUS FREE.

9. Severability: Should any provision of this Agreement be held to be invalid by a court of competent jurisdiction, then that provision will be enforced to the extent permissible, and all other provisions will remain in effect and are enforceable by the parties.

10. No Waiver: No waiver of any part of this Agreement will be deemed to be a waiver of any other provision in this Agreement. No term of this Agreement will be deemed to be waived by reason of any previous failure to enforce it. No term of this Agreement may be waived except in writing signed by the party waiving enforcement.

11. **Assignment:** This Agreement may not be assigned, in whole or in part, by Institution or Company without the prior written consent of CMC. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
12. **Notices:** All notices under this Agreement will be in writing and may be sent by overnight, pre-paid courier or by electronic copy or facsimile provided that a hard copy is also mailed to the attention of the legal department of Institution or Company, and in the case of CMC to the attention of both Secretary and Treasurer, at the addresses listed above. Any such notice will be effective: on the first business day after delivery, if sent by electronic means or by facsimile; seven days from the date of mailing if sent by mail; or on the next business day, if sent by courier.
13. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understandings and agreements between the parties in respect of such subject matter. No amendments to the terms and conditions of this Agreement are valid and binding unless made in writing and signed by the parties.
14. **Counterparts:** This Agreement may be executed in any number of counterparts and all such counterparts taken together are deemed to be an original and constitute one and the same instrument. Counterparts may be executed either in original, faxed, or non-editable electronic format and the parties adopt any signatures received by a receiving fax machine or as a non-editable electronic file as original signatures of the parties.
15. **Survival:** Sections 2, 4 (a, b, c and f), 5, 7, 8,12, 15 and 16 shall survive the expiry or termination of this Agreement.
16. **Governing Law:** This Agreement is governed by the laws of the Province of Ontario. The Parties submit to the exclusive jurisdiction of the courts of the Province of Ontario, sitting in Kingston Ontario.

Last updated May 4, 2021